

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X  
UNITED STATES OF AMERICA : 09-CR-405  
  
-against- US District Court  
Central Islip, NY  
FREDERICK CELANI,  
Defendant. : March 6, 2012  
- - - - - X 9:10 am

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ARTHUR D. SPATT  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (Call to Order of the Court.)

2 MR. LUNGER: Richard Lunger for the United  
3 States.

4 MR. NEVILLE: James Neville for Frederick  
5 Celani.

6 THE COURT: Let the record indicate that the  
7 defendant, Frederick Celani, has waived his appearance.

8 Is that correct, Mr. Neville?

9 MR. NEVILLE: Yes, your Honor, that's correct.  
10 And I believe that I wrote a letter indicating such, that  
11 is filed.

12 THE COURT: Also, while they do not transport  
13 prisoners from the MDC on Tuesday, this was put on for  
14 Tuesday because, Mr. Lunger, we generally put them on  
15 Wednesday or Friday, that is when we transport prisoners,  
16 but Mr. Lunger was tied up or something and we put it on  
17 for Tuesday.

18 Is that right, Mr. Lunger?

19 MR. LUNGER: That's correct, your Honor.

20 THE COURT: What is happening now with this  
21 matter, Mr. Neville?

22 What is the condition of Mr. Celani now?

23 MR. NEVILLE: Your Honor, his condition is poor  
24 in my opinion. I'm a layperson of course but my  
25 observations of him are that he is a radically different

1 person than he was when I first met him. Obviously,  
2 especially since October 14 of last year, of 2011, when  
3 Mr. Celani experienced and suffered a quite powerful  
4 stroke.

5 Since that time, October 14, 2011, I have  
6 noticed a marked difference physically in Mr. Celani. He  
7 lost a lot of weight. He moves more slowly than he did  
8 before. And from my observations in speaking with him he  
9 tells me that his memory has diminished extensively. And  
10 I do notice that when I speak to him he speaks in a more  
11 halting way.

12 Your Honor, this man was, and your Honor I think  
13 knows because Mr. Celani represented himself for a period  
14 in this case, he was very active in his defense, he has a  
15 very rich, creative mind in speaking about his case and  
16 his possible legal defenses, and I have seen all that  
17 change quite a bit. He can still speak, he can still talk  
18 to me, I'm not suggesting that he is a vegetable, but I do  
19 notice a marked diminution.

20 THE COURT: What is wrong with him?

21 MR. NEVILLE: He had a serious stroke on October  
22 14.

23 THE COURT: Which caused what?

24 MR. NEVILLE: I believe it has caused him to  
25 lose memory and lose neurological ability to speak, to

1 walk as well as he was before his stroke.

2 Also, your Honor, he reports that he has lost  
3 vision in his right eye. And that he also had, according  
4 to a physician, with whom I have not spoken and I have not  
5 seen these records, but Mr. Celani reported that he  
6 suffered some kind of hemorrhage behind his right eye  
7 which apparently was all part of his very high blood  
8 pressure which I believe now has been brought under  
9 control, frankly. I think now he is getting the correct  
10 medication. But the damage was done.

11 So he has difficulty controlling the right side  
12 of his body. He has lost vision in his right eye. His  
13 memory is diminished. And his ability to speak is  
14 diminished. And I have noticed, myself, diminution of his  
15 ability to speak, because I have spent a lot of time with  
16 this man.

17 When he had the stroke in October, your Honor,  
18 apparently the doctors can see in their examination, by a  
19 blood that had clotted earlier, that apparently they think  
20 he had two previous strokes, less severe than the third  
21 one that he had on October 14, 2011.

22 Following his third stroke, on October 14, which  
23 was a much stronger stroke, it almost killed him, I think  
24 he lost consciousness. And by the good work of the MDC,  
25 he was taken to Lutheran Trauma Center very quickly and I

1 believe that is what saved his life and saved his ability  
2 to still speak at all.

3 THE COURT: Where was he taken?

4 MR. NEVILLE: To Lutheran Medical Center, your  
5 Honor. It is in Sunset Park in Brooklyn. It is not far  
6 from the MDC. And it is a very, very good trauma center.  
7 So Mr. Celani was lucky.

8 And Mr. Celani told me that as he was having the  
9 stroke, the doctor of the MDC just happened to be in the  
10 unit and the doctor instructed people to get Mr. Celani to  
11 the hospital as soon as possible. So he was very lucky  
12 and fortuitous that things happened as quickly as they  
13 did. He would have either died or really lost his mental  
14 ability if more time had passed. So we are grateful for  
15 that. But nonetheless, damage was done apparently from  
16 this stroke.

17 And your Honor knows, we have been to court with  
18 Miss McFarland from the MDC's legal department, and quite  
19 frankly she did a great job to make sure that Mr. Celani  
20 had follow-up examinations regarding all these. And  
21 Mr. Celani has been taken, I think at least twice since we  
22 have been together, I can't remember the date but it is a  
23 few weeks ago, maybe a month ago, at the most, when  
24 Ms. McFarland from the MDC legal department was here,  
25 Mr. Celani has been taken at least twice to I think it is

1 New York Eye and Ear Infirmary in Manhattan for follow-up  
2 examinations. And that is where apparently it was  
3 determined that Mr. Celani had some kind of hemorrhage  
4 behind his right eye subsequent to the October 14 stroke.

5 So there are medical records at New York Eye and  
6 Ear Infirmary. I have in my possession records from  
7 Metropolitan Hospital in Manhattan which Mr. Celani was  
8 transferred to from Lutheran Medical Center a day or two  
9 later or maybe the same day, October 14, 2011, when he had  
10 his most severe stroke.

11 And the records from Lutheran Medical Center I'm  
12 told are downstairs in this courthouse in the Clerk's  
13 office. I subpoenaed the records from Metropolitan and  
14 Lutheran. I have yet to subpoena records from New York  
15 Eye and Ear. But in anticipation of any medical  
16 examination of Mr. Celani, I believe that all those  
17 records should be gathered to allow the physician that  
18 will examine Mr. Celani to read them and study them before  
19 he or she sees Mr. Celani.

20 THE COURT: You say the records from the  
21 hospitals are downstairs in the Clerk's office.

22 MR. NEVILLE: From Lutheran Medical Center.  
23 They are downstairs.

24 THE COURT: Why don't we get them right away.

25 THE COURTROOM DEPUTY: Yes. We can get them.

1 THE COURT: Please do that now. I would like  
2 the see those records.

3 THE COURTRROOM DEPUTY: I have to go downstairs  
4 and get them.

5 THE COURT: Would you please do that. I was  
6 going to ask you if you have a copy of the Lutheran  
7 Medical record. I would like to see it.

8 MR. NEVILLE: Yes. By chance, Metropolitan sent  
9 the records right to me. But Lutheran --

10 THE COURT: Do you have the records from  
11 Metropolitan?

12 MR. NEVILLE: I don't. I did see those. I  
13 don't have them me today, your Honor. No. I don't have  
14 them with me. But I have looked at them, and indeed he  
15 did have a stroke. There is no question in my mind that  
16 Mr. Celani had a stroke. This is not a malingering  
17 person.

18 THE COURT: Well, the question I have is, is he  
19 medically able or physically able or mentally able to  
20 stand trial. That is the issue here.

21 MR. NEVILLE: That is right. And that is a good  
22 question. I say as an officer of the court I'm not so  
23 sure that he is so capable.

24 This case, your Honor, as you know, is very  
25 unique. And Mr. Celani, I was talking to Mr. Lunger

1 before your Honor took the bench. Mr. Celani has made it  
2 very clear from day one in my relationship with him that  
3 he intended, always has intended, to testify in his trial.  
4 We know he can't be compelled to but has made it very  
5 clear that he is going to tell his side of this whole  
6 story.

7 And as you know, your Honor, the case from  
8 Mr. Celani's perspective or from his statements, and  
9 position is very, very different from what the government  
10 puts forth as the theory of the prosecution.

11 So Mr. Celani in order to put his defense  
12 forward as a practical matter, not as a legal matter but  
13 as practical matter, really must take the witness stand  
14 because there would be just no other way to get his side  
15 of the story into the case.

16 So for that reason alone, the fact that he has  
17 had these mental and physical maladies and serious  
18 illnesses, makes me or concerns me about his ability to  
19 put his defense forward as he has always intended to do.  
20 This isn't some Johnny-Come-Lately defense strategy to try  
21 to throw a monkey wrench in the works here, so to speak,  
22 and exploit the fact he had a stroke to say that he cannot  
23 testify.

24 He has made very clear from day one that he  
25 wants to tell his side of the story, and there is no other



1 way, no other person, no other source of evidence, that  
2 could replace Mr. Celani's testimony.

3 Believe me, your Honor, I know from speaking to  
4 him for many, many hours.

5 THE COURT: But you do not have any medical  
6 records here.

7 MR. NEVILLE: I did not bring the medical  
8 records from Metropolitan. But the first hospital that he  
9 went to on October 14 was Lutheran so --

10 THE COURT: What kind of doctor do you say  
11 should examine him?

12 MR. NEVILLE: A neurologist, I would think. A  
13 doctor that deals with the potential consequences of a  
14 stroke and how that affects the brain and the motor  
15 sensory system in the body.

16 THE COURT: Mr. Lungert?

17 MR. LUNGER: Yes, your Honor.

18 THE COURT: What is your view on all of this?

19 MR. LUNGER: Well, your Honor will recall what  
20 precipitated this conference was Mr. Celani's desire not  
21 to come to court.

22 The last status conference was scheduled for I  
23 think January -- I'm sorry, February 24, and Mr. Neville  
24 wrote to the court, seeking to waive Mr. Celani's  
25 appearance. The court had done it once before, on January

1 27, had waived Mr. Celani's appearance for essentially the  
2 same reason.

3 The government's concern was that on a  
4 going-forward basis if there are going to be status  
5 conferences in which substantive issues in the case are  
6 going to be discussed, that it is more appropriate for the  
7 defendant to be here rather than to continue to waive his  
8 appearance.

9 THE COURT: I agree. But I don't think we  
10 discussed any substantive matters.

11 MR. LUNGER: That is absolutely correct.

12 THE COURT: The only thing we have been  
13 discussing is his health and his ability to be here.

14 MR. LUNGER: That is absolutely correct, your  
15 Honor.

16 In fact, at the one appearance that your Honor  
17 did accept his waiver, I don't believe any substantive  
18 discussions were had.

19 At the last conference, on January 27, that was  
20 a conference that was focused exclusively on Mr. Celani's  
21 health.

22 And your Honor may recall on that January 27  
23 conference Miss McFarland, from the MDC, came out and she  
24 had some of his medical records in hand and she went  
25 through the history of treatment that Mr. Celani has been

1 receiving since the stroke he sustained back in the fall  
2 of last year.

3 So the reason why the government wrote to your  
4 Honor is, we agree, he should be examined by a physician  
5 to determine whether he is physically able to come to  
6 court. And I have been in touch with the MDC and they  
7 have reported to me that his primary care physician at the  
8 MDC says he is capable of taking care of himself and that  
9 there is nothing that prevents from him coming to court.

10 Nevertheless, your Honor obviously has the  
11 discretion to send him for a medical evaluation to  
12 determine whether he is physically able to come to court.  
13 And it is certainly within the court's discretion, and we  
14 certainly wouldn't oppose it, if the court were to also  
15 order a mental competency exam, although, again, we don't  
16 think there is any problem with him mentally. It is not a  
17 situation where counsel is telling the court he cannot  
18 communicate with his client, although I understand after  
19 his stroke, as counsel states, his speech is maybe halting  
20 a little bit and that he frequently moves slower. I'm not  
21 hearing any kind of claim that he is mentally incompetent.

22 But out of an abundance of caution, if the court  
23 also wants to send him, in addition to a physical  
24 examination to determine whether he is physically able to  
25 come to court, if the court also wants to order a mental

1 competency exam, that can be done in relatively short  
2 order.

3 I understand they are routinely done in the  
4 Metropolitan Correction Center, in Manhattan, and the  
5 court can order that to take place within the next 30 days  
6 with a report to follow.

7 So again, the government doesn't think he is  
8 mentally incompetent and the government also thinks he can  
9 come to court. Nevertheless, this is an issue that has  
10 been raised so we think it should be addressed.

11 THE COURT: I'm looking at some notes that I  
12 made on two occasions, January 26 of this year and January  
13 27, when Nicole McFarland -- I think she was here in  
14 person, was she not?

15 MR. LUNGER: Yes, your Honor.

16 THE COURT: Well, the only consideration that I  
17 have as far as an examination by a doctor or doctors is  
18 who should appoint this doctor or doctors and where do we  
19 get this doctor or doctors from.

20 Now, I have never appointed a doctor in a  
21 criminal case to examine someone on behalf of the court,  
22 or anything like that. I would have to do some research  
23 and call to find somebody who would be able to go to the  
24 MDC. Doctors who are specialists in neurology, for  
25 example, are busy generally and do not do things like run

1 to the MDC to make an examination. I do not know of any  
2 doctors that I can call right now. I would have to do  
3 some research on it.

4 MR. NEVILLE: Your Honor?

5 THE COURT: Yes.

6 MR. NEVILLE: May I? I think your Honor has  
7 pointed out a very important issue here.

8 I agree with the court that a neurologist should  
9 see Mr. Celani. I know Mr. Lunger just suggested that  
10 Mr. Celani be taken to the MCC, the Metropolitan  
11 Correctional Center, in Manhattan, for this examination.

12 On that I would ask respectfully that the court  
13 consider ordering that Mr. Celani be taken to Metropolitan  
14 Hospital, to Lutheran, where he already be has been taken,  
15 or to New York Eye and Ear Infirmary in Manhattan, where  
16 he has already been taken, to be examined by a doctor in  
17 the doctor's own environment and office and where whatever  
18 testing facilities are available, I don't know what tests,  
19 an MRI or a CAT scan or any other kind of tests that might  
20 be conducted.

21 It should done in a hospital setting.  
22 Obviously, first of all, if something should happen to  
23 Mr. Celani, he is right in the hospital. But maybe for  
24 our purposes more importantly, that an examination be done  
25 in a doctor's office or a hospital with machinery and

1 nurses and aides and whoever else is there to support the  
2 doctor; not at the MCC, your Honor, most respectfully.

3 I think that is an awful idea, with all due  
4 respect to Mr. Lunger, especially since Mr. Celani has  
5 been taken to these various hospitals already. So we know  
6 it can be done.

7 THE COURT: You mentioned Lutheran and  
8 Metropolitan. What was the other hospital?

9 MR. NEVILLE: New York Eye and Ear Infirmary, I  
10 think is the name, if I'm not mistaken. It is also in  
11 Manhattan. And I believe it is a hospital that the Bureau  
12 of Prisons has some kind of contract with, I think.

13 But I know that Mr. Celani has been taken to  
14 each of those three New York City hospitals, and to the  
15 New York Eye and Ear, as I say, at least twice.

16 THE COURT: I think that would be the right  
17 place to have him examined, and then the doctor at the  
18 hospital wouldn't have to travel to the facility or  
19 anything like that.

20 MR. NEVILLE: Right. I agree.

21 MR. LUNGER: Your Honor, what I would say is as  
22 follows.

23 There are two examinations that I think should  
24 occur here. One is a mental examination, which are (sic)  
25 routinely performed at Metropolitan Correctional Center.

1 They also may have appropriate physicians at the MCC, such  
2 as neurologists, who could also --

3 THE COURT: Such as what?

4 MR. NEVILLE: Such as a neurologist. I don't  
5 know, and I can look into that, to determine whether the  
6 Bureau of Prisons has neurologists on staff. If they did  
7 not, then Mr. Celani could be sent off premises, as he has  
8 in the past.

9 What the government would ask is two things.  
10 One, that the medical records be produced to the  
11 government so that whoever examines Mr. Celani can have  
12 those in hand; and that, secondly, that the Bureau of  
13 Prisons be given a reasonable period of time, perhaps 30  
14 days, to determine where the exam or exams should take  
15 place, whether it be at any of the hospitals mentioned by  
16 Mr. Neville or the Eye and Ear Infirmary that he  
17 mentioned.

18 So that would be our request.

19 THE COURT: Well, about that last request.

20 I think that in order to get a top doctor or  
21 doctors to do this, I'm going to have to have him brought  
22 to the hospital. They are not going to go to the prison  
23 to do this examination.

24 And, by the way, who is going to pay for these  
25 examinations?

1 MR. LUNGER: Well, your Honor, this is a case  
2 where CJA counsel has, they are appointed, so at the end  
3 of the day the government pays, whether it is -- in the  
4 past it has been the MDC. The MDC has sent the defendant  
5 off premises for medical treatment and they have got, the  
6 Bureau of Prisons has footed the bill. So I assume that  
7 is what is going to happen here, as well, your Honor.

8 If there is a mental competency exam performed  
9 at MCC, my understanding is that is performed in house.  
10 But if he has to go off premises for an examination, then  
11 I think MDC.

12 THE COURT: How do I know who will perform a  
13 medical examination at the MDC? Do we have a list of  
14 doctors? How do we know this?

15 MR. LUNGER: I could find out what doctors are  
16 available in terms of, if we are talking about a  
17 neurologist I think that is going to be a specialist that  
18 MDC is going to go outside to have him examined by.

19 THE COURT: You are talking about two different  
20 examinations. One is a neurological exam, to see what his  
21 condition is.

22 MR. LUNGER: Yes.

23 THE COURT: And a mental competency exam, to see  
24 if he is competent to stand trial?

25 MR. LUNGER: Yes.



1 THE COURT: I now have these records here from  
2 the Lutheran Health Care Center. I'm going to let the  
3 lawyers view them and get copies of them.

4 But for the purpose of this discussion, it says  
5 here:

6 *Patient complaint. October 14, 2011. 6:08 pm.*  
7 *Transient ischemic attack. He was transported to the*  
8 *hospital by ambulance. His chief complaint was expressive*  
9 *aphasia.*

10 Then it says: *The prisoner brought to the*  
11 *hospital to R/O stroke about 4:15 pm. Became aphasic.*  
12 *Patient denies pain, cough, fever, or rash.*

13 *The history and complaint chief complaint is*  
14 *difficulty speaking. A 63-year-old male presents with an*  
15 *expressive aphasia for approximately 20 minutes at 4:15*  
16 *pm. Patient states he was typing on his computer when he*  
17 *developed blurry vision. He went to the jail doctor and*  
18 *he completely understood what the doctor was trying to*  
19 *tell him but he could not express what he wanted to say*  
20 *and was saying inappropriate words.*

21 *Bystanders said he repeating "banana" over and*  
22 *over again. Patient had a mild headache on the top of his*  
23 *head which is resolving. Patient denies any distal*  
24 *numbness, weakness, chest pain. No prior occurrences.*  
25 *Examination of his various parts of his body are negative,*

1     *NEG.*

2             *Patient states he knew what he wanted to say but*  
3     *couldn't say it. Patient also states his words were not*  
4     *making any sense. No neurological deficits noted at this*  
5     *time. No facial droop or asymmetry noted. No fall risks*  
6     *identified. Patient denies pain at present time.*

7             *Patient is federal prisoner with expressive*  
8     *aphasia onset at 4:15 pm. Improved over the next 20 to 30*  
9     *minutes but patient still having some difficulty finding*  
10    *words. Seen by stroke team.*

11            *Patient is to be transferred to Metropolitan*  
12    *Hospital if stable for transportation. Patient was*  
13    *medically stable for transfer to Metropolitan Hospital.*  
14    *He will be transferred tonight. Patient started on*  
15    *heparin drip. Transport here to take patient to*  
16    *Metropolitan Hospital.*

17            Well, on a score sheet dated October 14, 2011,  
18    where it is zero to 3, he is marked zero on every level  
19    except movement of his right arm, and speech. He has a  
20    one for each of those, but everything else is zero, which  
21    means normal.

22            In his neurological flow sheet, this is  
23    interesting:

24            *His eye response: spontaneous. His motor*  
25    *response, obeys commands. His verbal response: full.*

1 Again, the initial diagnosis is *transient expressive*  
2 *aphasia*.

3 There were tests made. X-rays, I suppose. Or  
4 even more than x-rays, I cannot make it out, because they  
5 say that images were reviewed.

6 *Findings: There is no evidence of intracranial*  
7 *hemorrhage or extraaxial collections. There were some*  
8 *findings made which they said could represent old*  
9 *infarcts.*

10 And he was given chest, apparently, x-rays.

11 *No evidence of acute pleural or parenchymal*  
12 *disease. Electrocardiogram.*

13 And again there was an MRI given to him and the  
14 impression:

15 *There is some abnormal flair signal in the right*  
16 *parietal lobe. This is a minimally abnormal diffusion*  
17 *signal in this area without abnormal signal to indicate an*  
18 *acute area of ischemia.*

19 *Differential diagnosis includes an infiltrative*  
20 *process or subacute infarction.*

21 Well, with my limited knowledge of medicine,  
22 looking at this record of the Lutheran Hospital, where he  
23 was taken immediately after sustaining this stroke, it  
24 does not look too serious to me. However, notwithstanding  
25 my previous occupation as a lawyer in medical cases and

1 notwithstanding fact that I took three medical courses at  
2 the Society of Medicine on 105th Street in Manhattan in  
3 three consecutive years because I wanted to learn about  
4 orthopedic medicine; the first year I took the course I  
5 understood about 10 percent. This is a regular medical  
6 course. I understood about 10 percent of what the  
7 professor was saying. The next year I took the same  
8 course and I understood about 25 percent of what the  
9 professor was saying. And the third year, I took the same  
10 course again and I understood about one-third of what the  
11 professor was saying. But some of it has remained with  
12 me.

13               However, we are going to have to have him  
14 examined, and the question is by whom and where? That is  
15 the problem.

16               MR. LUNGER: This is what I can tell the court,  
17 your Honor. I do know that there are psychiatrists or  
18 psychologists on staff at the Metropolitan Correctional  
19 Center who routinely do mental competency exams, so I  
20 believe a mental competency exam can be done in fairly  
21 short order.

22               I will inquire as to whether there are  
23 neurologists also on staff at the MCC, and I can probably  
24 get back to the court in a week's time or less. In the  
25 event there are no neurologists on staff, then I think the

1 defendant can be sent out for a neurological exam and a  
2 report can be written up and provided to the court  
3 thereafter.

4 THE COURT: So you will let me know.

5 I would do it as soon as possible because this  
6 case has lingered a lot. It is mostly my fault that it  
7 has lingered because I don't know who to call or to ask to  
8 do this examination. The doctors that I know are busy  
9 practicing and they are too busy to do anything.

10 So the question is, who do we get to do these  
11 exams?

12 MR. LUNGER: I will get back to the court as  
13 soon as possible.

14 THE COURT: Let me know if there is anybody on  
15 staff who will do it. I want an impartial examination. I  
16 don't want anybody who has a predilection in favor of the  
17 government or anything like that.

18 MR. LUNGER: Absolutely, your Honor. Okay.

19 MR. NEVILLE: Your Honor, if I may. Again, the  
20 mental competency exam, in my opinion, should still be  
21 done in conjunction with the neurological exam, and  
22 therefore it makes sense that both of those exams be done  
23 in the same place.

24 But certainly the neurological exam, your Honor,  
25 with all due respect to Mr. Lungar and his statement about

1 the MCC and doctors on staff there, it makes no sense at  
2 all to have a neurological examination of this man at the  
3 MCC, at a prison. I don't care who the doctor is, I don't  
4 care if it is the number one doctor in the universe, he or  
5 she is not going to do a proper neurological exam without  
6 the attendants and appropriate support and equipment and  
7 testing paraphernalia, if you will. That has to be done  
8 in a hospital.

9 I don't know why Mr. Lurger is harping on doing  
10 a neurological in a prison. That makes no sense. Maybe  
11 the psychological exam with somebody. That, I can see his  
12 logic; certainly from the government's perspective, to  
13 save money, to have it be a doctor that works at the  
14 prison. But that does lead me to the next point, your  
15 Honor, that I will make.

16 Your Honor already made the point, and I am  
17 emphasizing what your Honor has already said, that these  
18 exams must be done by an impartial person. And I am  
19 concerned that at the MCC, certainly the neurological  
20 exam, I say with all confidence, with all due respect to  
21 Mr. Lurger, that is a ridiculous idea, that the  
22 neurological exam be done in a prison, but even the  
23 psychological exam.

24 My respectful contention and assertion to this  
25 honorable court is that both of these exams be conducted

1 in a doctor's own office, facility, hospital, whatever the  
2 case may be; not at the MCC. And, your Honor, we do need,  
3 and I ask pardon from the court for not bringing the  
4 Metropolitan record with me today, I should have done that  
5 but I didn't, but I do have them in my office.

6 THE COURT: What do they say?

7 MR. NEVILLE: They basically say the same thing  
8 that your Honor has read from Lutheran. They are more  
9 extensive because there was a more profound examination.  
10 But I'm not prepared to try to repeat or reiterate or  
11 summarize those records right now off the top of my head  
12 because I never took any medical courses and I know I  
13 would not have understood probably anything that was being  
14 said there.

15 So I certainly can't piece together what I saw  
16 of these Metropolitan records right now, but I do have  
17 them and I will provide them to Mr. Lurger and to the  
18 court.

19 THE COURT: Let us have a copy of those records.

20 MR. NEVILLE: Absolutely.

21 But as I say, I do not have the records from the  
22 New York Eye and Ear Infirmary where Mr. Celani has gone  
23 at least twice. I think we need those records and also  
24 the records from the doctor at the MDC, in Brooklyn, who  
25 has examined Mr. Celani many times. I think those records

1       should also be given to whoever the doctor is that does  
2       this exam.

3               THE COURT: I agree.

4               MR. NEVILLE: So I think, with Mr. Lunger's  
5       help, the MDC medical records could be obtained quite  
6       quickly. I will prepare a subpoena for him, your Honor,  
7       to sign, although Metropolitan and Lutheran went ahead and  
8       provided their documents on an attorney's subpoena which I  
9       provided them, so if the court instructs me to go ahead  
10      and do the same for the New York Eye and Ear, I will do  
11      that.

12              If the court would like me to bring the subpoena  
13      to the court for examination --

14              THE COURT: I think, just to make sure, I will  
15      so order the subpoena. I would like to see all the  
16      records. I think that the doctor or doctors who do the  
17      examination should have all the records and --

18              MR. LUNGER: Your Honor, while we have been  
19      talking, I have just received an email message from Ms.  
20      McFarland, who your Honor remembers from the last  
21      conference. She is the attorney from the MDC. She has  
22      told us that there are no neurologists on staff and that  
23      Mr. Celani would be sent out to see a neurologist.

24              THE COURT: There is.

25              MR. LUNGER: There are no neurologists on staff.



1 THE COURT: Okay.

2 MR. LUNGER: So Mr. Celani will be sent out to  
3 see a neurologist.

4 As far as mental competency exam, those are  
5 routinely and professionally done by staff psychiatrists  
6 at the MCC. These are doctors who have no knowledge of  
7 this defendant. They have no knowledge of this case. I  
8 have no direct contact with them. They have no direct  
9 contact with any of the prosecution team. I have every  
10 reason to believe that that will be a professional and  
11 objective mental evaluation.

12 So again, what we propose is that a mental exam  
13 be done at MCC and that, as we now know, that Mr. Celani  
14 will be sent off premises for a neurological exam.

15 I can submit an order to the court, which your  
16 Honor can sign, directing that this happen within the next  
17 30 days, with reports to follow shortly thereafter.

18 THE COURT: I think you should prepare an order.  
19 But I do believe that both examinations should be done at  
20 a hospital away from the MDC.

21 I'm sure that there are very fine doctors in the  
22 MDC who are impartial and are going to tell what they see,  
23 but just for my edification let's do it at the hospital.

24 MR. LUNGER: Okay. I will communicate that to  
25 the Bureau of Prisons.

1           THE COURT: It is much more effective to see  
2 what the result is.

3           The order that has to be prepared will have to  
4 provide that he is to be sent out for both the  
5 neurological and the mental competency.

6           MR. LUNGER: Very well, your Honor.

7           THE COURT: I think it is better for everybody  
8 if it is done that way. Then there will be no doubt.

9           There would be no doubt by me if it was done in  
10 the facility. I understand that. But just to make sure.

11          MR. LUNGER: That is how I will draft the order,  
12 your Honor. Thank you.

13          THE COURT: Okay.

14          MR. NEVILLE: I'm sorry, your Honor.

15          THE COURT: I think you each ought to get copies  
16 of this medical record.

17          Would you be able to make copies, Mr. Lungar,  
18 for counsel?

19          MR. LUNGER: Yes, your Honor.

20          THE COURT: Okay. And return that to the court.

21          MR. LUNGER: Okay.

22          MR. NEVILLE: Your Honor --

23          THE COURT: I'm going to tell you now,  
24 Mr. Neville. I see nothing in those records that would  
25 lead me to believe that your client cannot stand trial.

1 That is from my layperson's viewpoint.

2 MR. NEVILLE: Understood, your Honor.

3 Judge, I don't think I need to say this. I  
4 think it is obvious. But before Mr. Celani is sent out  
5 for these examinations, we need to get all these records  
6 first. So I don't want Mr. Lunger to tell --

7 THE COURT: You have to get all the records  
8 together so that the doctor or doctors who examine him  
9 will have all the records.

10 MR. NEVILLE: Thank you. And Ms. McFarland does  
11 have a release, a HIPPA authorization, signed by  
12 Mr. Celani to release those medical records. Miss  
13 McFarland asked me to provide her with that and I did  
14 that. So that should be on file with the MDC.

15 THE COURT: Okay. And if we need further  
16 authorizations, you will get them for us.

17 MR. NEVILLE: Thank you.

18 THE COURT: There is one other matter that was  
19 brought to my attention, and that was a notice of motion  
20 of nonparty Congressman John D. Dingell to quash a  
21 subpoena duces tecum.

22 Did you see this at all, Mr. Neville?

23 MR. NEVILLE: Yes. I have seen the filing, your  
24 Honor. That is actually the second subpoena that I had  
25 served on Congressman Dingell's office. The first was

1 over a year ago.

2 Another staff attorney filed a motion to quash.  
3 Your Honor granted that motion to quash. I had a second  
4 subpoena, a different subpoena, which included the same  
5 material demanded in the first subpoena but then  
6 additional material about other individuals in Congressman  
7 Dingell's office, hence this second motion to quash, which  
8 I have not yet responded to because, quite frankly, lately  
9 the issues have been regarding Mr. Celani's health and so  
10 I have not gone forward with any response to that.

11 But that does lead me to, I'm glad your Honor  
12 brought this up because, getting back to the legal part of  
13 this case, getting away from Mr. Celani's medical  
14 condition, I have tried to obtain information that would  
15 allow me to corroborate and verify what Mr. Celani has  
16 told me in fact occurred throughout this case and we have  
17 talked about it in this honorable court various times and  
18 I won't go into it.

19 THE COURT: I don't want to get into the merits,  
20 either, because we don't have Mr. Celani here.

21 MR. NEVILLE: Very well, your Honor.

22 THE COURT: And even though he has waived his  
23 appearance, I don't want to get into anything of substance  
24 until he is here.

25 MR. NEVILLE: I agree with that, your Honor.

1 I just will point out to the court that there is  
2 an April 2, 2012, deadline set by this court for all  
3 motions. And since Mr. Celani's stroke and attendant  
4 difficulties that I have witnessed, myself, your Honor,  
5 notwithstanding what your Honor has said about the medical  
6 record from Lutheran, I have seen Mr. Celani a lot and I  
7 have seen the effects of the stroke and we have had  
8 discussions about that, mostly his medical condition, and  
9 we have had discussions about the case, but the case,  
10 itself, and the preparation, the continued preparation of  
11 the defense has slowed down quite a bit.

12 So I am concerned about that April 2 date, and  
13 given this examination that we are going to have, I'm  
14 asking the court or I'm just previewing to the court my  
15 position, which is that that April 2 date should be  
16 continued and extended.

17 THE COURT: I think you are right.

18 How much time do you want?

19 MR. NEVILLE: I would say 60 days beyond that,  
20 your Honor, just to be on the safe side.

21 MR. LUNGER: Can I be heard, your Honor, on  
22 this?

23 THE COURT: Yes.

24 MR. LUNGER: This date was set on October 13 of  
25 last year and your Honor said you were not going to change

1 this date, that this was a firm date, and that thereafter  
2 a trial would be set.

3 This is not a situation where Mr. Neville cannot  
4 communicate with his client. He has made that very clear  
5 on the record today. This is about a motion deadline,  
6 motions that were contemplated being made back in the  
7 fall.

8 There is absolutely no reason why that date  
9 can't stay put, irrespective of examinations that are  
10 being contemplated here today. This is not a situation  
11 where a defense attorney doesn't have any inkling of what  
12 kind of motion he wants to make based upon a lack of  
13 communication with his client.

14 And we respectfully request that that motion  
15 date stay where it is.

16 MR. NEVILLE: With all due respect to  
17 Mr. Lungert, I did not say that I could communicate with my  
18 client as well as I always could. In fact, I explicitly  
19 had said that the communication with Mr. Celani is  
20 different than it was prior to the time he had his stroke.  
21 And this motion date in fact was set, oddly enough, the  
22 day before Mr. Celani had this stroke.

23 I believe, your Honor, that Mr. Celani's blood  
24 pressure is now under control and that he has been  
25 stabilized because of the efforts of the MDC and the

1 doctors that have examined and treated Mr. Celani, but  
2 mostly because of this honorable court and my applications  
3 concerning his medical issues, which have gone on now for  
4 months.

5 I said earlier in this session that my  
6 communication with Mr. Celani is different than it was  
7 prior to his stroke, number one, so Mr. Lunger misspoke  
8 there. He is allowed to take whatever position he wants  
9 to take regarding this motion date, but I would ask him  
10 not to speak for me in terms of how I'm communicating with  
11 my client.

12 And I don't think Mr. Lunger, even before the  
13 stroke or after, has had too many discussions with  
14 Mr. Celani, so I'm in a pretty good position to talk about  
15 how I observe Mr. Celani these days.

16 THE COURT: I think that this has been an  
17 extraordinary event that occurred, having a stroke and  
18 requiring all these examinations. That would be a  
19 proximate cause of an extension of time.

20 In my view that is a reasonable request, and I'm  
21 extending the motion date from April 2, 2012, to June 4,  
22 2012.

23 MR. NEVILLE: Thank you, your Honor.

24 THE COURT: All right.

25 Anything else at this time?

1 MR. LUNGER: The only thing I would ask is, if  
2 there is a HIPPA authorization that was signed by the  
3 defendant to allow the MDC to turn over medical records, I  
4 would just like to know how recent that was because I know  
5 they expire.

6 THE COURT: If necessary we will get a new one.

7 MR. LUNGER: Very well, your Honor.

8 THE COURT: Mr. Celani will sign another  
9 authorization.

10 MR. NEVILLE: Absolutely, your Honor.

11 THE COURT: I would get another authorization.

12 MR. NEVILLE: Yes, sir.

13 THE COURT: And serve it on the government.

14 MR. NEVILLE: Yes, sir.

15 THE COURT: Okay?

16 MR. NEVILLE: Thank you, your Honor.

17 THE COURT: Very good. I'm going to receive  
18 these records and then we will see what happens.

19 (Proceedings adjourned at 10:10 am.)  
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23  
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